

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

TOMMY LYNN PATTERSON	§	
Plaintiff,	§	
	§	
VS.	§	Civil Action No. SA-05-CA-0626RF
	§	
KERR COUNTY	§	
And W.R. HIERHOLZER, In His	§	
Official Capacity as Sheriff of Kerr County,	§	
Texas	§	
Defendants.	§	

**DEFENDANT KERR COUNTY'S RESPONSE IN OPPOSITION TO  
PLAINTIFF'S MOTION FOR JUDGMENT AS A MATTER OF LAW AND  
MOTION FOR NEW TRIAL**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE ROYAL FURGESON:

NOW COMES the **KERR COUNTY**, Defendant in the above entitled and numbered cause and files this, its Response in Opposition to Plaintiff's Motion JMOL and Plaintiff's Motion for New Trial and would respectfully show unto the Court the following:

I.

Defendant **KERR COUNTY** asserts unto the Court that the above reference case was tried to a jury of Good American Citizens who returned a unanimous verdict in the case. The result of the jury verdict is a Take Nothing Judgment by the Plaintiffs on all claims.

Plaintiff raises as an issue for their JMOL and Motion for New Trial of whether or not the Plaintiff's burden was to show an intentional discrimination. The Fifth Circuit in *Delano/Pile v. Victoria County, Texas*, 302 F.3d 567, 575 (5<sup>th</sup> Cir. 2002) held that under

the ADA Plaintiff can only recover damages upon a showing of intentional discrimination.

II.

Defendant **KERR COUNTY** moves the Court to deny Plaintiff's Motion for Judgment as a Matter of Law and Motion for New Trial and enter Judgment in accordance with Defendant **KERR COUNTY'S** proposed Judgment that Plaintiff's take nothing in this case.

**WHEREFORE, PREMISES CONSIDERED,** Defendant **KERR COUNTY** prays that Plaintiff's Motion for Judgment as a Matter of Law and Motion for New Trial be in all things denied.

Respectfully submitted,

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BY /s/ Charles S. Frigerio  
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ATTORNEYS FOR DEFENDANT  
**KERR COUNTY**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 13th day of February, 2008, I electronically filed the foregoing Defendant Kerr County's Response in Opposition to Plaintiff's JMOL and Motion for New Trial with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Mr. Liston Radke  
Mr. Paul D. Rich  
Rich & Associates, L.L.C.,  
3500 Oak Lawn Avenue, Suite 510,  
Dallas, Texas 75219

/s/ Charles S. Frigerio  
CHARLES S. FRIGERIO